

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-06-IH-2307
Communications Options, Inc.	)	
	)	NAL/Acct. No. 200732080031
Apparent Liability for Forfeiture	)	
	)	FRN No. 0003735230
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 26, 2007**

**Released: July 27, 2007**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Communications Options, Inc., (“COI”), has apparently violated section 54.711(a) of the Federal Communications Commission’s (the “Commission” or “FCC”) rules<sup>1</sup> by willfully and repeatedly failing to maintain records and documentation to justify information reported in its Telecommunications Reporting Worksheets (“Worksheets”) and provide the records and documentation to the Commission upon request. We further find that COI apparently violated a Commission order issued pursuant to sections 4(i), 4(j), 218 and 403 of the Communications Act of 1934, as amended (the “Act”),<sup>2</sup> by willfully and repeatedly failing to respond on a timely basis to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents, and support its response with an affidavit or declaration. Based upon the facts and circumstances surrounding this matter, we find that COI is apparently liable for a total monetary forfeiture in the amount of \$65,000.

**II. BACKGROUND**

2. The Act codified Congress’s historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>3</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the universal service fund (the “Fund” or “USF”) based upon their interstate and international end-user

<sup>1</sup> 47 C.F.R. § 54.711(a).

<sup>2</sup> 47 U.S.C. §§ 154(i), 154(j), 218, 403. The Telecommunications Act of 1996 amended the Communications Act of 1934, *see* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>3</sup> 47 U.S.C. § 254(d).

telecommunications revenues.<sup>4</sup> The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.<sup>5</sup> Failure by some providers to pay their share into the Fund skews the playing field by giving non-paying providers an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the Fund.

3. The Commission has established specific procedures to administer the universal service program. A filer is required to submit an FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet (“annual Worksheet”) for the purpose of determining its USF payments,<sup>6</sup> and, with certain exceptions, to file quarterly Worksheets (“quarterly Worksheets”) to determine monthly universal service contribution amounts.<sup>7</sup> These periodic filings trigger a determination of liability, if any, and subsequent billing and collection, by the entities that administer the regulatory programs. For example, the Universal Service Administrative Company (“USAC”), the administrator of the USF, uses the revenue projections submitted on the quarterly Worksheets to determine each carrier’s monthly universal service contribution amount.<sup>8</sup> The Commission’s rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.<sup>9</sup>

4. Section 54.711(a) of the Commission’s rules requires contributors to “maintain records and documentation to justify the information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request.”<sup>10</sup> The recordkeeping

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<sup>4</sup> 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.*

<sup>5</sup> See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) (“*2006 Contribution Methodology Order*”), *petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC*, --- F.3d ---, 2007 WL 1574611 (D.C. Cir. 2007).

<sup>6</sup> Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC, which is then associated with further filings by the company and is used to track the carrier’s contributions and invoices.

<sup>7</sup> The Commission has thus established “a central repository of key facts about carriers” through which it could monitor the entry and operation of interstate telecommunications providers to ensure, among other things, that they are qualified, do not engage in fraud, and do not evade oversight. See *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) (“*Carrier Selection Order*”).

<sup>8</sup> Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (“*Quarterly Reporting Order*”); 47 C.F.R. § 54.709(a).

<sup>9</sup> 47 C.F.R. § 54.713. Further, under the Commission’s “red light rule,” action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay when due its regulatory program payment such as USF contributions, and if payment or payment arrangements are not made within 30 days from notice to the applicant, such applications or requests will be dismissed. 47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. See *FCC Announces Brief Delay in Enforcement of Red Light Rule*, Public Notice, 19 FCC Rcd 19452 (2004).

<sup>10</sup> 47 C.F.R. § 54.711(a).

requirement is necessary to ensure that contributors report correct information on the Worksheets.<sup>11</sup> The Commission and USAC may review records and documentation underlying revenue reported on contributors' Worksheets to determine whether contributors are properly reporting revenue, and thus contributing their fair share to the costs of the universal service program. The Commission will swiftly and effectively enforce these recordkeeping obligations to ensure the smooth administration of the USF program.

5. COI is a telecommunications carrier that began providing telecommunications service in the United States in November, 1990.<sup>12</sup> USAC received information in March 2005 alleging that COI was not reporting revenues collected from Presubscribed Interexchange Carrier Charges ("PICC") or End User Common Line ("EUCL") charges.<sup>13</sup> PICC and EUCL charges are "access" charges that allow certain local exchange carriers to recover the telecommunications service provider costs of enabling end users to make and receive interexchange calls.<sup>14</sup> Interexchange carriers ("IXCs") pay PICC charges to local exchange carriers. IXCs may pass PICC charges on to their subscribers. Local subscribers pay EUCL charges to local exchange carriers on a per line basis. Filers are required to report PICC and EUCL charges in the interstate revenue portion of their Worksheets. PICC and EUCL charges to end users can account for a significant portion of an interstate telecommunications provider's interstate revenue. Thus, if an interstate telecommunications provider fails to report PICC and EUCL revenue on its Worksheet, the provider may significantly underreport interstate telecommunications revenue, thereby preventing USAC from invoicing a full assessment of the provider's fair share of universal service contributions.

6. USAC initiated an audit of COI on April 11, 2005 to assess whether COI's 2003 and 2004 annual Worksheets were accurately and properly prepared to include end-user revenues collected for PICC and EUCL.<sup>15</sup> After requesting documentation and holding extensive discussions with COI, USAC concluded that COI's information was "unauditable."<sup>16</sup> On November 15, 2005, USAC requested that the Commission investigate whether COI had violated a Commission rule.<sup>17</sup>

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<sup>11</sup> *Matter of Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, ¶ 34 (2002).

<sup>12</sup> See Letter from P.J. Moody, Controller, Communication Options, Inc. to David Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Response 4 (Aug. 30, 2006) ("LOI Response").

<sup>13</sup> Letter from Wayne M. Scott, Vice President, Internal Audit Division, Universal Service Administrative Company to Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 1 (Nov. 15, 2005) ("USAC Referral").

<sup>14</sup> Access charges recover the local exchange carrier's non-traffic sensitive ("NTS") costs, which consist primarily of the costs of poles, wires, conduit, and other local exchange facilities used to provide the telephone "loop" to local customers, i.e., a subscriber's connection to the public switched telephone network ("PSTN"). See generally *Commission Requirements for Cost Support Material to be Filed with January 1, 1990 Access Tariff Revisions*, Order, 4 FCC Rcd 6773, 6774, ¶ 8 (Deputy Chief, Common Carrier Bureau 1989) (discussing EUCL charges); *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16004-06, ¶¶ 54-60 (1997) (discussing PICC).

<sup>15</sup> USAC Referral at 1.

<sup>16</sup> *Id.* at 2 (stating that due to limitations in COI's billing and reporting systems, COI does not have the ability to prove or disprove whether it failed to report PICC and EUCL revenue).

<sup>17</sup> *Id.*

7. The Bureau initiated an investigation on July 13, 2006 by a letter of inquiry (“LOI”) to COI.<sup>18</sup> The LOI directed COI to, among other things, submit a sworn, written response to a series of questions relating to COI’s compliance with its filing and payment obligations involving regulatory fees, the USF, the Telecommunications Relay Service (“TRS”) Fund, and the North American Numbering Plan Administration (“NANPA”) Fund. COI’s response was due on August 2, 2006. On July 19, 2006, COI informed Bureau staff that COI was planning to submit a response “within the next 2 weeks.”<sup>19</sup> COI failed to respond by August 2, 2006, and when Bureau staff contacted COI to inquire about the status of COI’s response, COI stated that it “overlooked” the deadline and requested an extension until August 31, 2006. On August 28, 2006, the Bureau informed COI that failure to respond fully and timely to a Bureau letter of inquiry constitutes a violation of the Act and Commission rules.<sup>20</sup> COI submitted a response to the LOI on August 31, 2006.<sup>21</sup> Contrary to the Bureau’s directive,<sup>22</sup> COI’s LOI Response was not supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of COI with personal knowledge of the representations provided in COI’s response, verifying the truth and accuracy of the information submitted and to the production of all requested information and documents in COI’s possession, custody, control or knowledge.

8. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>23</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>24</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>25</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>26</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>27</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>28</sup> To impose such a forfeiture penalty,

<sup>18</sup> Letter of Inquiry from Trent Harkrader, Acting Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Stephen K. Vogelmeier, President, Communication Options, Inc. (July 13, 2006) (“LOI”).

<sup>19</sup> Electronic Mail Message from P.J. Moody, Controller, Communication Options, Inc., to Eric Bash, Assistant Division Chief, and David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (July 19, 2006, 12:35 p.m.) (“July 19, 2006 COI E-Mail”).

<sup>20</sup> Letter from Trent Harkrader, Acting Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to P.J. Moody, Controller, Communication Options, Inc. (Aug. 28, 2006).

<sup>21</sup> See Letter from P.J. Moody, Controller, Communication Options, Inc. to David Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 30, 2006, (“LOI Response”).

<sup>22</sup> LOI at 9 (directing COI to comply with 47 C.F.R. § 1.16).

<sup>23</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

<sup>24</sup> 47 U.S.C. § 312(f)(1).

<sup>25</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>26</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

<sup>27</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>28</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>29</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>30</sup>

9. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.<sup>31</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>32</sup>

### III. DISCUSSION

10. The fundamental issues in this case are whether COI apparently violated the Commission’s rules and order by: (1) willfully or repeatedly failing to maintain records and documentation to justify information reported in COI’s Worksheets and provide the records and documentation to the Commission upon request; and (2) willfully or repeatedly failing to submit a sworn and timely response to a directive of the Bureau to provide certain information and documents. We answer these questions affirmatively. Based on a preponderance of the evidence, and as discussed below, we therefore conclude that COI is apparently liable for a forfeiture of \$65,000 for apparently willfully and repeatedly violating a Commission order issued pursuant to sections 4(i), 4(j), 218, and 403 of the Act and section 54.711(a) of the Commission’s rules.<sup>33</sup>

#### A. Submission of Supporting Records and Documentation for Worksheets

11. We conclude that COI has apparently violated section 54.711(a) of the Commission’s rules by willfully and repeatedly failing to maintain records and documentation to justify information reported in COI’s Worksheets and provide the records and documentation to the Commission upon request. Section 54.711(a) of the Commission’s rules clearly establishes a carrier’s obligation to maintain supporting documentation for a period of three years and to provide that documentation to the Commission on request.<sup>34</sup>

12. The administrators of the federal regulatory programs rely on the Worksheets telecommunications providers file to determine liability for, and subsequent billing and collection of, payments for the USF and other federal regulatory programs. Accuracy in the Worksheets is therefore vital. The only means by which the Commission or USAC may verify the accuracy of a provider’s Worksheet is through analysis of the supporting documents in the service providers’ own files. The failure of a provider to maintain, and provide to the Commission or USAC, records and documentation

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<sup>29</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>30</sup> See, e.g., *SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”) (forfeiture paid).

<sup>31</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

<sup>32</sup> 47 U.S.C. § 503(b)(2)(D); See *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

<sup>33</sup> 47 U.S.C. §§ 154(i), 154(j), 218, 403; 47 C.F.R. § 54.711(a).

<sup>34</sup> 47 C.F.R. § 54.711(a).



supporting its Worksheets thwarts the Commission's ability to verify reported revenue, and could permit contributors to remove from the base of USF contributions telecommunications revenues that otherwise should have been included. Viewed in this context, maintaining and submitting documentation to support data reported in Worksheets is not simply an administrative tool, but a fundamental and critical component of the Commission's universal service program. Consequently, a filer's failure to maintain records and documentation that support its Worksheets may impede the very purpose for which Congress enacted section 254(d) – to ensure that every required contributor “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>35</sup> The effect on other federal regulatory programs that rely on an assessment of the Worksheets is similar. Indeed, a telecommunications provider that prevents the Commission and USAC from verifying the revenue information submitted in its Worksheets can operate outside of the Commission's oversight and evade its federal obligations to fully contribute toward the vital programs linked to reporting obligations.

13. Upon learning that USAC found COI's records to be “unauditable,” the Bureau directed COI to identify all PICC and EUCL revenue COI collected and reported, and provide all supporting records and documentation.<sup>36</sup> In response, COI claimed it reported PICC and EUCL revenue,<sup>37</sup> but COI did not provide records and documentation that either (a) demonstrate it reported PICC and EUCL revenue,<sup>38</sup> or (b) support the revenue it reported on its Worksheets. COI provided financial statements and general ledger reports with its LOI responses that could not be tied to the line items for revenue reported in COI's Worksheets. As a result of COI's failure to satisfy the Commission's record-keeping requirement, both the Bureau and USAC were unable to verify whether COI was in fact fully and accurately reporting its interstate telecommunications revenue, including its PICC and EUCL revenue.<sup>39</sup>

14. Based on the preponderance of the evidence, we find that COI apparently violated section 54.711(a) of the Commission's rules<sup>40</sup> by willfully and repeatedly failing to maintain records and documentation to justify information reported in COI's Worksheets and provide the records and documentation to the Commission upon request. We therefore propose a forfeiture for COI's failure to maintain and submit the supporting records and documentation.

## **B. Failure to Provide Sworn LOI Response on a Timely Basis to the Bureau**

15. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,”<sup>41</sup> and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper

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<sup>35</sup> 47 U.S.C. § 254(d).

<sup>36</sup> LOI at 5-6.

<sup>37</sup> LOI Response at 9-10.

<sup>38</sup> COI admitted that it did not have the capability to separate USF, PICC and EUCL revenue in its accounting systems, and stated it would install new software in September 2006 that does collect the information. LOI Response at 16.

<sup>39</sup> USAC informed the Bureau that USAC was unable to perform any of its usual audit steps due to COI's recordkeeping failures. In particular, COI failed to provide USAC: (a) general ledger breakouts that tie the revenue from COI's general ledger or billing systems to the line items on COI's Worksheets; (b) traffic studies that support the percentages of COI's reported revenue types; and (c) the means to evaluate COI's process for making good faith estimates underlying its revenue reported on its Worksheets. USAC Referral at 1.

<sup>40</sup> 47 C.F.R. § 54.711(a).

<sup>41</sup> 47 U.S.C. § 154(i).

dispatch of business and to the ends of justice.”<sup>42</sup> Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”<sup>43</sup> Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”<sup>44</sup>

16. The Bureau directed COI to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that COI violated the Act and Commission rules. As evidenced by the Bureau’s facsimile confirmation sheet, and COI’s confirmation of receipt,<sup>45</sup> COI received the *LOI* on July 13, 2006. COI failed to respond to the *LOI* on a timely basis. Only after Bureau staff contacted COI<sup>46</sup> did it respond to the Bureau’s inquiries -- nearly one month after the response was due. Further, contrary to the Bureau’s directive,<sup>47</sup> COI has not submitted an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of COI with personal knowledge of the representations provided in COI’s response, verifying the truth and accuracy of the information submitted, and to the production of all requested information and documents in COI’s possession, custody, control or knowledge. We conclude that COI’s substantial and unwarranted delay in responding to the *LOI*, and its failure to support its response with an affidavit or declaration, constitutes an apparent willful and repeated violation of a Commission order.<sup>48</sup>

### C. Proposed Forfeiture

17. We find that a proposed forfeiture against COI in the amount of \$65,000 is warranted. This proposed forfeiture amount includes a proposed penalty of \$50,000 for failing to maintain records and documentation to justify information reported in its Worksheets and provide the records and documentation to the Commission upon request, and a proposed penalty of \$15,000 for failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents, with a supporting affidavit or declaration.

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<sup>42</sup> 47 U.S.C. § 154(j).

<sup>43</sup> 47 U.S.C. § 218.

<sup>44</sup> 47 U.S.C. § 403. Section 403 provides, in part: “The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.”

<sup>45</sup> July 19, 2006 COI E-Mail.

<sup>46</sup> Bureau staff contacted COI by telephone on August 23, 2006 to inquire about the status of COI’s response to the *LOI*.

<sup>47</sup> *LOI* at 9.

<sup>48</sup> See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7599-7600, ¶¶ 23-28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to *LOI*); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (“*Globcom NAL*”) (subsequent history omitted) (delayed response to an *LOI* considered dilatory behavior that may result in future sanctions); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enforcement Bureau 2005) (\$20,000 forfeiture for failure of an entity to provide any response to a USF *LOI*); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (Enforcement Bureau 2004) (\$3,000 forfeiture for a partial response to an *LOI*); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enforcement Bureau 2003) (\$10,000 forfeiture for a non-responsive reply to an *LOI*); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enforcement Bureau 2001) (\$4,000 forfeiture after individual refused to respond to an *LOI*).

18. In previous cases, we have taken enforcement action for failure to satisfy universal service obligations, including the filing of required quarterly and annual Telecommunications Reporting Worksheets and payment of required contributions to the fund.<sup>49</sup> We find these violations of the Act and the Commission's rules egregious in light of their impact on an important federal program aimed at ensuring affordable, quality telecommunications services in all regions of the nation. While this case involves a contributor's failure to maintain records and documentation to justify information reported in its Worksheets and to provide those records and documentation to the Commission upon request, we find it similarly egregious in nature. Maintaining records and documentation that supports the reported revenue in the Telecommunications Reporting Worksheets is fundamental to the administration of multiple statutorily-derived programs – including the USF. A contributor's failure to maintain supporting records and documentation precludes the Commission and USAC from verifying these important federal programs are fully funded “on an equitable and nondiscriminatory basis”<sup>50</sup> and therefore undermines the programs and the purposes for which Congress established them.

19. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$1,000 for failure to maintain required records.<sup>51</sup> We find, however, that failing to maintain records and documentation supporting the Telecommunications Reporting Worksheets warrants a substantial increase to the base forfeiture amount in light of the important public policy aspects of the underlying rule. As the Commission observed in a recent USF enforcement action,<sup>52</sup> “the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers' compliance with our rules.”<sup>53</sup> To assist the Commission and USAC in this endeavor, the document retention rule was adopted to ensure the accuracy of a Worksheet could be established, particularly in a case where information suggests the USF contributor is not fully reporting revenue.<sup>54</sup>

20. Thus, we find the failure to maintain documents supporting a Worksheet as directed by the Commission analogous to the filing of inaccurate information in that the provider prevents accurate administration of the program and enforcement of Commission rules. The Commission has previously concluded a \$50,000 forfeiture is appropriate for the filing of an inaccurate Worksheet.<sup>55</sup> We conclude that the same amount also is appropriate for the failure to maintain supporting documents and provide them to the Commission. Taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we therefore conclude that a proposed forfeiture of \$50,000 is warranted for failing to maintain records and documentation supporting the Telecommunications Reporting Worksheets.

21. Turning now to COI's failure to provide documentation and respond to the Bureau's LOI, section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to

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<sup>49</sup> Cf. *Carrera Communications LP*, Order of Forfeiture, 2007 WL 1435605 (2007); *OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd. 10479 (2006); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710 (2006) (“*Globcom Forfeiture Order*”).

<sup>50</sup> 47 U.S.C. § 254(d).

<sup>51</sup> See 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

<sup>52</sup> *Globcom Forfeiture Order*, 21 FCC Rcd 4710; *Globcom NAL*, 18 FCC Rcd 19893.

<sup>53</sup> *Globcom NAL*, 18 FCC Rcd at 19904, ¶ 30.

<sup>54</sup> See *Matter of Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, ¶ 34 (2002).

<sup>55</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24, ¶¶ 29-38; *Globcom NAL*, 18 FCC Rcd at 19904-05, ¶¶ 30-32.



respond to a Commission communication.<sup>56</sup> COI's failure to respond to the Bureau's inquiries for approximately one month occurred following COI's promise that its response would be timely submitted.<sup>57</sup> In fact, however, when Bureau staff contacted COI after the deadline to inquire about a response, COI informed Bureau staff that COI had "overlooked" its obligation to respond. When COI finally did submit a response it lacked the required supporting affidavit or declaration required by the Commission.<sup>58</sup> We find that the substantial delay in responding to the *LOI*, and the failure to fully comply with the Bureau's directives, in the circumstances presented here, warrants a substantial increase to the base amount. Misconduct of this type exhibits a blatant disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, the misconduct inhibits our ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission, *i.e.*, the reporting and contribution requirements for the Commission's regulatory programs. Prompt, sworn responses to Bureau inquiry letters are critical to the Commission's enforcement function. We therefore propose a forfeiture against COI of \$15,000 for failing to provide a sworn response to the *LOI* on a timely basis. This forfeiture amount is consistent with recent precedent in similar investigations involving the failures of companies to respond to Bureau inquiries concerning compliance with the reporting and contribution requirements for the Commission's regulatory programs, despite evidence that the *LOIs* had been received.<sup>59</sup> COI and other carriers are warned that they may not delay or resist the Bureau's direction to provide information in response to an *LOI*. Such conduct obstructs the enforcement process and will not be tolerated.

#### IV. CONCLUSION

22. Based on the facts and circumstances presented, we find that a proposed forfeiture against COI in the amount of \$65,000 is warranted. We caution that additional violations of the Act or the Commission's rules could subject COI to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of COI's operating authority, including disqualification of COI's principals from the provision of any interstate common carrier services without the prior consent of the Commission.<sup>60</sup> In addition, we note that, to the extent COI is ever found to be delinquent on any debt owed to the Commission (*e.g.*, has failed to pay all of its USF contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by COI, in accordance with the agency's "red light" rules.<sup>61</sup>

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<sup>56</sup> 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

<sup>57</sup> See July 19, 2006 COI E-Mail.

<sup>58</sup> See *LOI* at 9 (directing COI to comply with 47 C.F.R. § 1.16).

<sup>59</sup> See *International Telecom Exchange, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 6232 (Enforcement Bureau 2006) (proposing \$28,062 forfeiture for apparent failure to respond on a timely basis to a directive of the Enforcement Bureau to provide certain information and documents, and for apparent failure to contribute to the Telecommunications Relay Service Fund); *BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954 (Enforcement Bureau 2005) (imposing \$20,000 forfeiture for failure to respond on a timely basis to a directive of the Enforcement Bureau to provide certain information and documents); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enforcement Bureau 2005) (same).

<sup>60</sup> See *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881, 6894, ¶ 36 (2003); *NOS Communications, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6952, 6965, ¶ 27 (2003).

<sup>61</sup> 47 C.F.R. § 1.1910.

## V. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Communication Options, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$65,000 for willfully and repeatedly violating the Commission's rules and order.

24. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,<sup>62</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Communication Options, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. Payment by check or money order, payable to the order of the "Federal Communications Commission," may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note the NAL/Acct. No. referenced in the caption.

26. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to Hillary DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. E-mail address: hillary.denigro@fcc.gov.

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

28. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.<sup>63</sup>

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<sup>62</sup> See 47 C.F.R. § 1.80.

<sup>63</sup> 47 C.F.R. § 1.1914.

29. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to P.J. Moody, Controller, Communication Options, Inc., 921 Eastwind Drive, Suite 104, Westerville, Ohio 43081.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Enforcement Bureau